

REMARKS/ARGUMENTS

Upon careful and complete consideration of the Office Action dated September 20, 2005, applicant has amended the specification and claims which, when considered in conjunction with the comments herein below, are deemed to place the present application into condition for allowance. Favorable reconsideration of this application, as amended, is respectfully solicited.

The present Office Action begins by rejecting claims 1, 4 and 8 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. More specifically, the prior amendment to the claims to include limitations of the “borders being distant to one another, distant borders and distant top and bottom borders” is alleged to not be supported by the original disclosure. The Examiner alleges that the “specification does not disclose that there is a distant between the borders. In fact, page 6 line 15 discloses ‘substantially juxtaposed borders.’ Figure 1 shows juxtaposed borders.” Applicant respectfully disagrees.

Applicant has amended both the specification and claims by amending the terms “juxtaposition” and “juxtaposed” to “superposition” and “superposed”. It is respectfully submitted that this amendment is clearly supported both by the original specification and drawings and does not constitute new subject matter. The Examiner’s attention is respectfully directed to the paragraph bridging pages 4 and 5 of the subject specification:

-the consecutive folding of the cooked and hot dough band with topping over itself, border to border, its cutting into folded band components having a format of defined length, and the separation of said band components by a defined small gap,

The above-quoted section of the specification thus supports both the fact that the borders are folded over themselves, i.e. superposed rather than juxtaposed, and that the borders are distant to one another. Several other sections of the description describe the

folding of the borders, one over the other (see page 5, lines 8-15; page 6, lines 9-12; page 8, lines 10-16; and page 10, lines 3-11. Similarly, this is also shown by Figure 1, wherein the top border 5 and the bottom border 7 are clearly distant to one another and are joined or closed to make the pouch by the application of the cordon 3. Still further, claim 4 as originally submitted supports the fact that a small defined gap is formed by the folding of the borders of the dough over itself.

Although there was an obvious confusion of the terms “juxtapose” and “superpose” when preparing this application, there can be no doubt, based on the other parts of the specification as noted above, as well as on the drawings, as to what was intended. Specifically, the present invention is directed a process for the manufacture of a food product, said process involving the folding of the cooked dough with topping over itself on leaving the oven and forming a pouch in a format corresponding to that of the product to be obtained, substantially with superposition of the top and bottom borders of the folded dough being distant to one another and forming a peripheral edge between said borders, followed by the coating of the peripheral edge with a cordon of edible paste. It is respectfully submitted that, as amended, the specification and claims are now consistent with one another and the rest of the disclosure.

Based on the amendments noted above, it is respectfully requested that the rejection of claims 1, 4 and 8 under 35 U.S.C. §112, first paragraph, be withdrawn.

The Office Action continues by rejecting the same claims, i.e. claims 1, 4 and 8, under 35 U.S.C. §112, second paragraph, for allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner indicated that the phrase “being distant to one another” is not clear in conjunction with the use of the phrase “juxtaposition of the top and bottom borders.” Applicant agrees with the Examiner and as explained above has amended the phrase “juxtaposition of the top and bottom borders” to read “superposition of the top

and bottom borders.” As indicated above, the cooked, hot dough (with topping thereon) is clearly being folded over itself, border to border, forming folded band components separated by a defined small gap. As illustrated in Figure 1, following the folding of the borders, the top border is clearly distant to the bottom border, i.e. there is a gap between the borders. This gap is filled or closed by the use or application of a cordon of edible paste. As now amended, it is respectfully submitted that claim 1 is consistent with itself as the borders can be both superposed and distant to one another at the same time.

The Examiner in making the above rejection noted that it was not clear how a distance can form when the borders are formed by folding one portion of the dough over the other portion. It is respectfully submitted that the concept can be visualized by imaging the closing of a book. The front and back covers of the book are comparable to the top and bottom borders of the dough being folded over itself when the book is being closed from an open position. The front and back covers in the closed position do not touch due to the contents, i.e. pages, of the book, just as the borders of the dough do not touch due to the toppings applied to the pizza dough.

Claims 4 and 8 were rejected for essentially the same problem as claim 1, with the addition of the fact that in claim 4 the phrase “the distant borders” did not have proper antecedent basis. Claim 4 has been amended to delete the word “the” prior to the term “distant borders”. Based upon the same arguments submitted above with respect to claim 1, it is believed that claims 4 and 8 are now clear and definite as well, and it is respectfully requested that the rejection of claims 1, 4 and 8 under 35 U.S.C. §112, second paragraph, be withdrawn as well.

The Office Action then goes on to maintain the rejection of the claims under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent No. 4,400,404 to Persi (hereinafter referred to as “Persi”) in view of U.S. Patent No. 5,756,137 to Viviano et al. (hereinafter referred to as “Viviano et al.”). As was argued previously, it is respectfully

submitted that these references teach the edges of the paste are sealed intimately to form a pocket while in the present invention the top and bottom borders are clearly distant to one another and sealed by the application of the cordon. The Examiner previously dismissed this argument believing that the recitation of “substantially with juxtaposition of the top and bottom borders” in the claims did not support an argument that a clear distance existed between the borders. It is respectfully submitted that the claims, as now amended, clearly support this concept.

Accordingly, the claimed invention is directed to a process for the manufacture of a food product comprising, *inter alia*, the fact that the top and bottom borders (reference numbers 5 and 7 shown in Figure 1) are distant to one another and are sealed together by the paste cordon. As is clearly shown in Figure 1, the borders of the folded dough have been superposed on one another but separately maintained with ingredients there between as previously argued and are distant to one another. A cordon is applied on the peripheral edge formed between the distant top and bottom borders, said top and bottom borders thus being maintained parallel to one another. As previously stated, this aspect of the present invention has the advantage to avoid any tension between the parallel faces of the food product. In contrast, sealed faces, such as those of the prior art, have to balance the internal pressure exerted by the ingredients. It is respectfully submitted that this critical aspect of the present invention is neither disclosed nor suggested by either Persi or Viviano et al., alone or in combination. That is, in both the teachings of Persi and Viviano et al., the borders of the food product are sealed together.

More particularly, the Examiner’s attention is directed to Persi, column 3, lines 23-26 where it is set forth that the long edges (18) are in abutment with each other and the edges (10) have opposite halves in abutment. Thus, the short (16) and long edges (18) are crimped to one another.

With respect to Viviano et al., seals are formed around each serving of filling ingredients (18) by sealing pressing, causing regions (20, 21) of the dough layer (14) to sealingly join together to form sealed external edges (10). The fold in the dough layer (14) creates a strong seal along the side (24) of the pocket. Sub-pockets (30) are also formed (see column 4, lines 44-67 of Viviano et al.).

Again, in both the disclosures of Persi and Viviano et al., the edges of the paste are sealed intimately to form a pocket. This is quite different than the present invention in which the top and bottom borders are clearly distant to one another and sealed by the application of a cordon to the peripheral edge formed between the top and bottom borders. Any rejection of the claims based on these references cannot ignore what the references teach or do not teach. That is, the skilled artisan reading both Persi and Viviano et al. could not combine these references in any way, shape or form to come up with the present invention as claimed. Although these arguments were previously submitted, the Examiner dismissed said arguments as it was unclear as to the meaning of the “distant between the edges”. It is now believed that this concept is clear in that the borders 5 and 7 of the faces of the folded paste are separated and distant to each other, forming a peripheral border edge between the folded borders and having this peripheral edge, i.e. the distance between said borders, joined by the application of a cordon of edible paste.

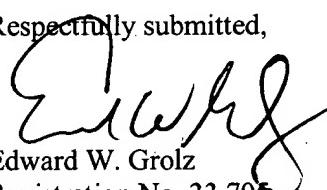
Based on the differences between the claimed invention and the cited art as set forth above, it is respectfully requested that the rejection of claims 1-5 be withdrawn.

The Office Action further rejected claims 8-10 under 35 U.S.C. §103(a) as allegedly unpatentable over Viviano. It is respectfully submitted that the critical aspect of the present invention as identified above would not have been obvious to the skilled artisan. That is, once again, the aspect of the present invention in that the food product is closed with the application of a cordon of edible paste set on the edge of its distant top and bottom borders has the advantage to avoid any tension between the parallel faces of the food product. In

contrast, sealed faces, such as those of Viviano and the other prior art, have to balance the internal pressure exerted by the ingredients. It is respectfully submitted that this critical aspect of the present invention is neither disclosed nor suggested by either Persi or Viviano et al., alone or in combination. That is, in both the teachings of Persi and Viviano et al., the borders of the food product are sealed together. Accordingly, for the same reasons set forth above, it is respectfully requested that the rejection of claims 8-10 be withdrawn as well.

Finally, it is further submitted that all the claims in the application as presently submitted contain patentable subject matter and a Notice of Allowance is earnestly solicited.

Respectfully submitted,



Edward W. Grolz
Registration No. 33,705

SCULLY, SCOTT, MURPHY & PRESSER
400 Garden City Plaza
Suite 300
Garden City, New York 11530
(516) 742-4343